

EFFECTIVE DATE OF THIS ORDINANCE IS DECEMBER 1, 2005

ORDINANCE NO. 05-27-388

**Re: Text Amendments To Subdivision Regulations and Zoning Ordinance
Regarding Submittal Deadlines, Procedures and Schedules**

PREAMBLE

Pursuant to the authority contained in, *inter alia*, the Annotated Code of Maryland, Article 66B, §§4.01 and 5.03, and the Frederick County Code, §§1-16-31 and 1-19-60 through 1-19-64, the Board of County Commissioners (BOCC) is seeking to enact text amendments to Frederick County's Subdivision Regulations (Chapter 1-16 of the Frederick County Code) and Zoning Ordinance (Chapter 1-19 of the Frederick County Code). The text amendments propose changes to the submittal deadlines, procedures and schedules for development applications and appeal requests to the Planning Commission and the Board of Appeals, and are set forth on the attached Exhibits A and B.

The proposed text amendments are summarized below:

Subdivision Regulations (Exhibit A)

- 1) **Section 1-16-8** – Establishing a 60-day review cycle for minor subdivision plats and clarifying that the review period for preliminary/final plats will be the same as for preliminary plat approval.
- 2) **Section 1-16-30** - Setting a deadline of 45 days prior to a scheduled subdivision review meeting of the Planning Commission for all modification requests and specifying certain submission requirements;
- 3) **Section 1-16-71** - Changing the filing deadline for preliminary plat approval requests from 60 to 90 days prior to a scheduled subdivision review meeting of the Planning Commission, specifying certain submission requirements, and describing conditions under which the review period may be reduced to 60 days; changing the length of preliminary plat approvals from 3 years to the lesser of 5 years or the period of APFO approval; changing the deadline for preliminary plat extension requests from 45 to 90 days prior to the end of the approval period for

all requests involving APFO testing; and clarifying the provision concerning notice of the lot recordation deadline from the County Planning Department staff.

Zoning Ordinance (Exhibit B)

- 1) Section 1-19-46 - Changing the deadline for applications to the Board of Appeals for a variance or special exception from 30 to 45 days prior to the regularly scheduled monthly meeting of the Board of Appeals, specifying that the deadline for applications for appeals is 30 days after the date of the action or decision that forms the basis for the appeal, and specifying certain required information for appeal applications;
- 2) Section 1-19-46 – Clarifying the time for filing an appeal;
- 3) Section 1-19-302 - Changing the deadline for submission of concept plans for clustering of lots in the Resource Conservation District from 45 to 60 days prior to the meeting at which the subdivision is to be considered by the Planning Commission;
- 4) Section 1-19-303 - Changing the date for submission of concept plans for clustering of lots in the Agricultural District from 45 to 60 days prior to the meeting at which the concept plan is to be considered by the Planning Commission;
- 5) Section 1-19-361 - Changing the date for submission of a concept plan for clustering of residential lots from 45 to 60 days prior to the meeting at which the concept plan is to be considered by the Planning Commission;
- 6) Section 1-19-412 - Changing the date for submission of site plan approval requests from 60 to 90 days prior to the meeting at which the site plan is to be considered by the Planning Commission and specifying certain submission requirements; and
- 7) Section 1-19-465 – Correcting section reference.

The County Commissioners held a duly advertised public hearing concerning this ordinance on Tuesday, October 25, 2005, during which the public had an opportunity to comment on the proposed text amendments.

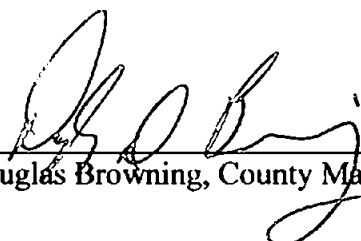
NOW THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS FOR FREDERICK COUNTY, MARYLAND that the text amendments attached hereto as Exhibit A and Exhibit B are hereby adopted; and

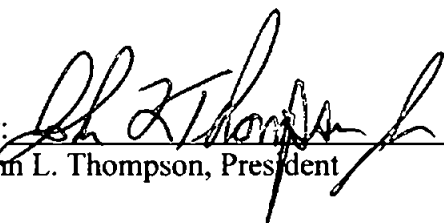
BE IT FURTHER ENACTED that this Ordinance will become effective on December 1, 2005 for all applications submitted on or after December 1, 2005. A fair summary of the ordinance shall be published in the *Frederick News Post* and a copy of the ordinance shall be filed with the Clerk of the Circuit Court for Frederick County, Maryland no later than November 16, 2005.

The undersigned hereby certifies that this ordinance was approved and adopted on the 25th day of October, 2005.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND


Douglas Browning, County Manager

By: 
John L. Thompson, President

KLM
10/26/05

EXHIBIT A

CHAPTER 1-16: SUBDIVISION RULES AND REGULATIONS

ARTICLE I: IN GENERAL

§ 1-16-8. MINOR SUBDIVISIONS.

(A) The Planning Director or, in his absence, a designated staff person has the authority to approve minor subdivisions of land and/or minor adjustments in lot lines without the necessity of the subdivider complying with preliminary plat procedures or going before the Planning Commission.

(B) A property owner may apply to the Department of Planning for approval of up to 5 lots by submitting a combined preliminary/final plat; providing, the proposed subdivision does not involve a proposed new street or highway and the property does not lie within any proposed park or recreation area. The combined preliminary/final application shall be submitted on forms provided and fees shall be paid as shown in § 1-16-46 of this Code. The combined preliminary/final plat shall follow all requirements of a normal final plat as shown in §§ 1-16-86 through 1-16-91 of this Code. The combined preliminary/final plat shall also contain the following information.

(1) Topographic information according to the following:

(a) Existing topography at 2 or 5 foot contour intervals. Elevations shall be based on government bench marks when available within 1,000 feet of property or if greater than 1,000 feet then by estimation from USGS quadrangle maps. Datum shall be stated in all cases together with elevation. Source of contours shall be stated on the plat, such as field run topo, or aerial topo, and the like. Interpolation contours from USGS quadrangle maps will not be accepted.

(b) On residential lots of less than 2 acres with new features, contour lines shall be indicated 25 feet beyond lot lines.

(c) On residential lots of 2 or more acres with new features, topography shall be shown for the proposed developmental area of the lot and 100 feet beyond the house site, septic area, well, driveway, entrance, and panhandle of the lot(s).

(d) On residential plats, where house, well, septic area, and driveways are existing, topographic information is not required except over any new panhandles or if requested by the Division of Public Works or the Health Department.

(e) Plats of institutional, commercial and industrial lots shall show full topography, extending 25 feet beyond the property line.

(f) On minor subdivisions or combined preliminary/final plats, topographical information shall be provided as above, but may be deleted from the plat prior to recording.

(2) All existing pertinent features either natural or manmade that may influence the design of the subdivision, such as important trees or wooded areas, power transmission towers, existing buildings and structures and water courses.

(3) Location of existing and recorded utilities or utility easements on or within 200 feet of the tract with approximate pipe sizes and directions of slope indicated. (Should include electric and telephone poles and towers.)

(4) Location and extent of permanent erosion and sediment control facilities (for example, sedimentation ponds, drainage ditches, diversion terraces, and the like), if required by the County Soil Conservation District, shall be shown.

(5) Soil type(s) information shall be provided and appropriate boundaries shown on the plat. In the event that residential structures are proposed on or within 100 feet of "wet soils," then a soils delineation report shall be prepared by a licensed soil scientist or professional engineer registered in the State of Maryland and shall be submitted for review by SCD prior to Planning Commission approval of the plat.

(6) (a) If a residential structure(s) with a basement(s) is proposed within "wet soils," the developer must:

1. Perform 1 of the following:
 - a. Construct a gravity drainage system in accordance with the BOCA Code; or
 - b. Utilize another similar solution acceptable to the Permits Office; or
 - c. Submit a geotechnical report by a registered professional engineer in the State of Maryland; and
2. Place a note on the plat requiring that all construction shall be in conformance with the approved solution.

(b) The combined preliminary/final plat shall conform to subsection (D) on the designation of the remainder.

(C) The Planning Commission shall require that the major subdivision procedures be followed in the event that any subsequent plat brings the number of lots off the original tract to 6 or more except when the plat contains 5 or less lots and involves no new streets. Then said plat shall be treated as a minor subdivision with approval by the Planning Commission at a subdivision review meeting within a normal ~~60~~30 day review cycle. In this case, the subject property must be posted according to the regulations found in § 1-16-71(D)(E) of this chapter.

(D) The Planning Commission shall require that the remaining original tract be shown as stated in the appropriate section below.

(1) If less than 5 acres of land remain in the original tract after the lots are excluded, then all the tract (lots and remainder) must be platted.

(2) If more than 5 acres of land remain in the original tract after the lots are excluded, then the owner is not required to plat the remaining acreage. He is required to provide a sketch of the tax map showing his entire acreage and the location of the lots being platted and any previously platted lots.

(3) If the remainder has no further subdivision rights the remainder shall bear a statement to the effect that the remainder cannot be further subdivided unless rezoned.

(E) The Planning Commission shall require the preliminary plat procedure to be followed if the minor subdivision is not in the combined preliminary/final plat form. Preliminary plats for minor subdivisions will be reviewed within THE TIME PERIODS SHOWN IN § 1-16-71(B) and (C) ~~a normal 45 day review cycle~~.

(F) A minor subdivision shall remain immune from any changes in applicable regulations or ordinances for 3 years from the date of the original submission of the minor subdivision plat to the Planning Division. If 3 years has elapsed and the said plat has not been

recorded then the plat will be voided. A voided plat has no further status and must be resubmitted.

ARTICLE II: ADMINISTRATION

§ 1-16-30. MODIFICATIONS.

(A) Where the Planning Commission finds that because of unusual circumstances of shape and topography or other physical features or conditions of the proposed subdivision, or because of the nature of adjacent developments, extraordinary hardship may result from strict compliance with this chapter, there may be granted a modification of this chapter when requested by the subdivider or developer. However, no such modification shall be granted which will have the effect of nullifying the intent and purpose of the Comprehensive Development Plan, the zoning regulations, this chapter or any other pertinent rules, regulations or laws of the county. In granting modifications, the Planning Commission may require such conditions as will, in its judgment, secure substantially the objections of the standards of the requirements so waived or modified.

(B) ALL MODIFICATION REQUESTS SHALL BE MADE IN WRITING AT LEAST 45 DAYS PRIOR TO A SCHEDULED SUBDIVISION REVIEW MEETING OF THE PLANNING COMMISSION AND SPECIFICALLY STATE THE TYPE AND EXTENT OF THE MODIFICATION BEING SOUGHT.

~~(B)~~(C) The planning staff shall have the authority to administratively approve modifications with regards to entrance locations in the following instances:

(1) Entrances on a state road that have State Highway Administration (SHA) approval;

(2) Situations with new lots created around existing entrances with adequate sight distance (on both collectors and minor arterials);

(3) ~~(a)~~—Common-use entrances utilizing existing single entrances which do not meet separation restrictions but have adequate sight distance (on both collectors and minor arterials);

~~(D)~~~~(b)~~ If an applicant disagrees with the decision of staff, the applicant may take the request to the Planning Commission. This request shall be filed with staff along with the appropriate fees at least 45 days prior to the Planning Commission agenda on which the request is scheduled.

~~(E)~~(E) Any modification of this chapter for a particular subdivision or development shall be noted on the final plat and appear in the records of the Planning Department and shall be transmitted to the subdivider or developer.

ARTICLE III: PLATS

DIVISION 3. PRELIMINARY PLAT

§ 1-16-71. APPROVAL PROCEDURES.

(A) The subdivider shall prepare a preliminary plat of the proposed subdivision conforming with the requirements set forth in this chapter and submit such plat to the Planning Department using the application forms provided.

(B) At least ~~90~~60 days prior to a scheduled subdivision review meeting of the Planning Commission, the appropriate number of prints of the plat shall be filed with the

Planning Department, along with the appropriate fee AND OTHER REQUIRED SUBMISSIONS, INCLUDING, BUT NOT LIMITED TO, ADEQUATE PUBLIC FACILITIES ORDINANCE STUDIES, FOREST RESOURCE ORDINANCE PLANS, SIGHT DISTANCE STUDIES, AND STORM-WATER MANAGEMENT CONCEPTS.

(C) The plat will be scheduled for a Technical Advisory Committee (TAC) meeting for review by agency representatives and representatives of the applicant, AND THE ~~except this~~ review period ~~MAY~~ can be reduced to ~~60~~ 30 days if:

(1) The developer waives the right to a Technical Advisory Committee (TAC) meeting; and MEETS ONE OF THE FOLLOWING CONDITIONS:

(A) A sketch plat has been reviewed by the Planning Commission; ~~or~~

(B) There are not any ~~proposed~~ REQUIRED new public improvements; or

(C) ~~if it~~ THE PLAT is a minor subdivision plat; OR

(2) THE PLANNING STAFF DETERMINES, AFTER THE TAC MEETING, THAT ALL COUNTY AND MARYLAND STATE AGENCY COMMENTS HAVE BEEN SUBSTANTIALLY ADDRESSED.

~~(C)~~(D) The Planning Department will transmit the preliminary plat to the appropriate agencies.

~~(D)~~(E) It shall be the responsibility of the applicant to place a public notice sign within 10 feet of each property line which abuts a public road. If the property does not abut a public road, a sign shall be placed in such a manner so that it may be most readily seen by the public.

(1) The Planning Department shall provide the required sign(s).

(2) The sign(s) shall be placed on the property at least 20 days prior to the initial Planning Commission meeting at which the subdivision plan is to be considered.

(3) The sign(s) shall be affixed to a rigid board and maintained at all times by the applicant until the initial meeting is held.

(4) The applicant shall file a notarized affidavit certifying that the required signage has been posted.

(5) If any person removes or tampers with a posted sign during the posting period, that person, upon conviction, shall be guilty of a misdemeanor.

~~(E)~~(F) It shall be the responsibility of the Planning Department to distribute plats and information to other agencies, receive comments from those agencies and to notify the developer as to Technical Advisory Committee recommendations and the time, date and place of meetings and hearings regarding his development. All such meetings shall be open to the public.

~~(F)~~(G) Each agency to which a plat is referred shall submit written recommendations denoting "approval," "conditional approval" or "disapproval" for stated reasons. If such agency recommendation is not made within 80~~45~~ days of the date of application, the plat shall be deemed to be approved by it and the Planning Commission may proceed to take action upon the plat at its regularly scheduled meeting.

~~(G)~~(H) The preliminary plat will be checked by the Planning Department as to its conformity with the Comprehensive Development Plan of the county; the requirements of the zoning and subdivision regulations of the county, including the intent and purpose of those regulations; and the recommendation of other federal, state and county agencies.

~~(H)~~(I) At the regularly scheduled subdivision review meeting of the Planning Commission, the Planning Department will present the recommendations and findings of other

agencies and the Department's own recommendation of approval, conditional approval or disapproval of the preliminary plat.

(H)(J) The Commission will act either to: approve, conditionally approve or disapprove the preliminary plat at a regular subdivision review meeting. Approval is tentative involving the general acceptability of the layout submitted and shall in no way constitute approval of the final plat. It shall be effective for THE a period of 3 years PRESCRIBED BY §1-16-30(Q) during which time the preliminary as approved is immune to any changes in applicable regulations or ordinances. Conformance to changes in the Design Manual may, however, be required by the Planning Commission.

(J)(K) Approval shall be noted by the Commission signing the necessary copies of the preliminary plat determined by staff, one of which shall be returned to the subdivider and ONE retained by the Commission.

(K)(L) If the Commission disapproves the preliminary plat, it shall set forth the reasons for disapproval in its records and provide the applicant with a copy.

(L)(M) Conditional approval of a preliminary plat shall state the conditions or modifications necessary to satisfy the requirements of this chapter, and the FINAL actual approval and signing of the preliminary plat shall not be made until such conditions have been satisfied. Such conditions of approval shall be satisfied within a time specified by the Planning Commission from date of conditional approval or the plat becomes null and void.

(M)(N) The Planning Commission may continue a decision on a plat if there is a lack of information or if substantial changes are necessary to be performed in order to make the plat acceptable to the Commission.

(N)(O) Any approved preliminary plat ~~or any plat continued for further study by the Commission~~ shall be exempt from any changes in subdivision regulations or other applicable law for a period THE PERIOD PRESCRIBED BY §1-16-30(Q) AND ANY EXTENSIONS OF THE APPROVAL PERIOD IN ACCORDANCE WITH §1-16-30(R) of 3 years from the date of approval. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CHAPTER. Exemptions from changes in subdivision regulations or other applicable law shall not be extended beyond 35 years unless the preliminary plat approval is extended as provided in subsection (Q).

(O)(P) The subdivider and concerned county agencies shall receive written notification as to approval, conditional approval, or disapproval of the plat.

(P)(Q) Preliminary plat approval MAY BE GRANTED FOR THE LESSER OF: (i) 5 YEARS FROM THE DATE OF APPROVAL, OR (ii) THE PERIOD OF ADEQUATE PUBLIC FACILITIES ORDINANCE APPROVAL FOR THE PRELIMINARY PLAT ~~shall become null and void at the end of 3 years from the date of approval.~~

(Q)(R) (H) The Planning Commission may, at their regular monthly meeting, grant an extension of the preliminary approval upon written application of the developer.

(1) In connection with such request, the Commission shall at a minimum consider the following:

- (a) Change of adjoining land use;
- (b) Change in street or highway plan; OR
- (c) Change in zoning or subdivision regulations.

(2) An extension shall be granted only when the developer has started construction of improvements which will be substantially affected by changes in applicable laws

and regulations. Additional extensions may be granted by the Planning Commission. However, immunity from changes in applicable laws and regulations shall not be extended beyond 5 years.

(3) A request for extension of preliminary approval WHICH REQUIRES ADEQUATE PUBLIC FACILITIES ORDINANCE TESTING FOR WATER, SEWER OR TRAFFIC shall be filed AT LEAST 45~~90~~ days prior to the end of the PRELIMINARY PLAT 3 year approval period.

(4) A REQUEST FOR EXTENSION OF PRELIMINARY APPROVAL WHICH DOES NOT REQUIRE ADEQUATE PUBLIC FACILITIES ORDINANCE TESTING FOR WATER, SEWER OR TRAFFIC SHALL BE FILED AT LEAST 45 DAYS PRIOR TO THE END OF THE PRELIMINARY PLAT APPROVAL PERIOD.

(5) The Planning Department shall WILL ENDEAVOR TO notify the subdivider ~~at least 120~~⁹⁰ days prior to the deadline date for recording that the plat will become void if recordation does not take place. FAILURE OF THE PLANNING DEPARTMENT TO SEND THIS NOTICE OR TO SEND IT IN A TIMELY FASHION SHALL NOT EXCUSE THE SUBDIVIDER FROM ITS OBLIGATION TO FILE ANY REQUEST FOR EXTENSION WITHIN THE TIME FRAMES DESCRIBED ABOVE.

~~(R)~~(S) If an extension of a preliminary plat has been denied, approved or the plat has been automatically voided, the subdivider and other concerned agencies shall receive written notice to that effect.

~~(S)~~(T) A disapproved or voided preliminary plat has no status and any further consideration or review submission shall be treated as a new application.

EXHIBIT B

CHAPTER 1-19 ZONING

ARTICLE II: ADMINISTRATION AND ENFORCEMENT

DIVISION 2. APPEALS, VARIANCES, ETC.

§ 1-19-46. GENERALLY.

(A) An application for appeals, variances or special exception shall be made on forms approved by the Division of Planning.

(B) The application FOR A VARIANCE OR SPECIAL EXCEPTION and the information required in subsection (C) below shall be filed with the Zoning Administrator a minimum of ~~30~~45 days prior to the regularly scheduled monthly meeting of the Board of Appeals.

(C) Required information FOR A VARIANCE OR SPECIAL EXCEPTION shall include:

(1) Plot plan or accurate drawing of the property showing the distances of all existing and proposed structures from all property lines, driveways and parking areas;

(2) Name and address of each person owning property adjacent to the subject property;

(3) Plans, architectural drawings, photographs, elevations, specifications or other detailed information fully depicting the exterior appearance of any existing structures on the property, including signs and the proposed construction;

(4) In addition, for all applications for a special exception, a statement shall be provided explaining in detail how the use is to be operated. The following information is required to be submitted:

(a) Hours of operation;

(b) Number of anticipated employees;

(c) Equipment involved; and

(d) Any special conditions or limitations which the applicant proposes for adoption by the Board.

(D) THE APPLICATION FOR AN APPEAL SHALL BE FILED IN ACCORDANCE WITH § 1-19-49 WITHIN 30 DAYS AFTER THE DATE OF THE ACTION OR DECISION BEING APPEALED. REQUIRED INFORMATION FOR AN APPEAL SHALL INCLUDE A COPY OF ANY WRITTEN DECISION THAT IS BEING APPEALED AND ALL OTHER INFORMATION PERTINENT TO THE APPEAL.

~~(D)~~(E) Fee shall be paid at the time of filing of application in accordance with the fee schedule established in this chapter.

~~(E)~~(F) The Board of Zoning Appeals shall hold a public hearing before making a decision on any appeal or other matter within its powers. Upon accepting an application for an appeal or for a special exception, the Zoning Administrator shall schedule the public hearing by the Board of Appeals. Appeals and applications filed in proper form shall be numbered serially, docketed and placed upon the calendar of the Board.

~~(F)~~(G) The Administrator shall cause to be published once a notice of the public hearing. This notice shall be published in a newspaper of general circulation in the county not less than 15 days prior to the date set for the hearing. All adjoining property owners, whether separated by

streets, railroads, or other rights-of-way, shall be notified by mail, of the time, date, place, and nature of the public hearing.

(G)(H) Within 3 days after acceptance of an application for an appeal, variance or a special exception, the applicant shall erect a sign as provided by the Zoning Administrator on the land involved. Such a sign shall be erected within 10 feet of the boundary line of such land which abuts the most traveled public road and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public. If the land lies within more than one block as shown on a plat recorded in the county land records, then a sign shall be erected on the land in each such block. A sign shall be maintained at all times by the applicant until a decision on the application has been made public by the Board of Appeals. It is a misdemeanor for any person to remove or tamper with such sign during the period it is required to be maintained. The applicant shall file an affidavit certifying the posting of the required sign.

(H)(I) The Board of Appeals shall make an on the site inspection of the premises involved in the application FOR A VARIANCE OR SPECIAL EXCEPTION.

(H)(J) A decision of the Board granting a variance or a special exception will be void 2 years from date of approval by the Board of Appeals unless the use is established or a building permit is issued and construction has begun and is in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

ARTICLE II: ADMINISTRATION AND ENFORCEMENT

DIVISION 2. APPEALS, VARIANCES, ETC.

§ 1-19-49. APPEALS.

(A) Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the jurisdiction affected by any decisions of the administrative officer. Such appeal shall be taken within 30 DAYS AFTER THE DATE OF THE ACTION OR DECISION BEING APPEALED ~~a reasonable time, as provided by the rules of the Board,~~ by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(B) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after notice of appeal shall have been filed with him that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(C) The Board of Appeals shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(D) In exercising the above-mentioned powers such Board may, in conformity with Md. Ann. Code, Art. 66B, as amended, reverse or affirm, wholly or partly, or may modify the

order, requirement, decision, or determination appealed from and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

ARTICLE V: DISTRICT REGULATIONS
DIVISION 3. SUPPLEMENTARY DISTRICT REGULATIONS
§ 1-19-302. RESOURCE CONSERVATION DISTRICT.

The following provisions shall apply to the Resource Conservation (RC) District.

(A) Sensitive area protection.

(1) Areas with slopes of 25% grade and greater shall not be developed. Buildings and structures and parking areas shall not be located on slopes of 25% grade and greater.

(2) Floodplains and wetlands shall be protected in accordance with the standards and requirements set forth in Division 5, Floodplain District, regulations of this chapter.

(3) Habitats of threatened and endangered species, as identified by the Maryland Department of Natural Resources, shall be protected from development or disturbance. All subdivision and site development plans involving an area identified as a habitat site shall be referred by the county to the Maryland Natural Heritage Program for comment. On sites where a habitat is identified, a mitigation plan will be required to show that adverse impacts on habitat sites are minimized.

(B) Tree cutting and forestry activities.

(1) Forest cutting or clearing activities in connection with land development shall be minimized. All activities to which the forest resource ordinance apply shall be subject to the regulations and requirements set forth in that ordinance. In addition to the forest resource ordinance requirements, no more than 40,000 square feet shall be cleared for each home site. For all permitted nonresidential uses, site development plan approval shall require that site clearing is minimized.

(2) Commercial logging and timber harvesting operations for which 5,000 square feet of soil is disturbed shall be subject to all state and local requirements, such as the following:

(a) Review and approval of a timber harvest plan by the Frederick County Forest Conservancy District Board;

(b) Approval of an erosion and sediment control plan by the soil conservation district.

(c) Approval of a grading permit by the Frederick County Department of Public Works.

(d) Where applicable, approval of a stream crossing permit by water resources administration.

(e) All applicable local, state and federal regulations concerning commercial logging and timber harvesting.

(C) Streets. New subdivision streets will not be permitted to be established in the resource conservation district, except in accordance with the clustering provision of subsection (E).

(D) Driveways. Approval of a grading permit by the Frederick County Department of Public Works shall be required for all driveways prior to site development to ensure that sediment and erosion control and stormwater management comply with soil conservation service standards.

(E) Clustering of residential lots.

(1) Purpose and intent.

(a) To encourage the conservation of sensitive elements in the resource conservation district through prudent siting of permitted uses and structures in order to mitigate environmental degradation and diminish the adverse impact to wildlife habitat and conservation resources.

(b) To provide for design elements that reduce the visual impact of permitted structures and uses in the resource conservation district.

(c) To provide for limited subdivision activity while minimizing the use of sensitive element areas and natural resources.

(d) To encourage the use of low impact subdivision design consisting of cluster lots, which are located on a portion or portions of the parcel subdivided and provide for the preservation of the remainder, which is the entire residual of the parcel being subdivided.

(2) Design.

(a) The design of a cluster subdivision shall reflect the purpose and intent of the resource conservation district and to the extent feasible shall be designed to accomplish the following objectives:

1. Result in a preserved area which is functional for its intended uses;

2. Cluster lots in an arrangement which minimizes adverse impacts on the resource conservation areas;

3. Avoid the need for removal of existing stands of trees, or geologic formations, particularly between the house site and public street or rights-of-way;

4. Preserve the rural and scenic quality of the landscape, particularly as viewed from public roads and vistas.

(3) Requirements.

(a) "Clustering" is an optional form of development at the discretion of the Planning Commission and shall be defined as directing subdivision of reduced sized lots on a single tract of land to meet the purposes of this section. The Planning Commission shall make the final determination as to whether a cluster development can be achieved in keeping with the purposes of this section.

(b) The maximum density permitted for the cluster design shall be based on a standard design that complies with the minimum lot size, width and yard areas as specified in the resource conservation district. Based on that standard plan, a cluster concept plan can be proposed in which lot sizes, which are part of the cluster, are kept to a minimum in order to limit the impact on the remainder. Lot sizes shall average not more than 1.5 acres in size with no lots exceeding 2 acres. The Planning Commission shall have the authority to grant modifications to cluster lot sizes and setback requirements based on Health Department requirements and to encourage low-impact environmental design.

(c) The Planning Commission may preclude clustering rights where subdivision under this section will not encourage careful siting of new homes to avoid impacting sensitive resources, where it will not produce optimal low-impact siting of new structures or

where clustering will increase permitted dwelling units or not be consistent with the purpose of the resource conservation district.

(d) All clusters of 6 or more lots may be served by an internal public street or common driveways, subject to Planning Commission approval, and shall not be stripped along an existing roadway.

(4) Procedures.

(a) Concept plan. For the subdivision of tracts eligible for cluster lots, 2 concept plans shall be submitted to staff a minimum of 4560 days prior to the meeting at which the subdivision is to be considered by the Planning Commission. One concept plan shall show all standard rights and one concept plan shall show potential cluster rights to determine the feasibility of subdivision rights for the original tract(s) of land. Each plan shall be prepared in accordance with a "sample" cluster plan and show the following:

1. The lot layout (scale no smaller than 1 inch equals 100 feet, including building restriction lines and appropriate dimensions.
2. Lot access;
3. Vicinity map (scale no smaller than 1 inch equals 2,000 feet, showing the tract(s) and total acreages included within the plan;
4. Topography with minimum 10 foot contours (USGS topographic interpretation is permitted for concept plan);
5. Development rights table indicating acreages and development rights, both standard and cluster, for each tract and the total;
6. Environmental data including soils, steep slopes, woodlands, wetlands, floodplain etc., for the cluster area and the remainder.

(b) The Planning Commission will have final approval over the location and layout of the proposed clustering of lots. The Planning Commission shall consider the following when reviewing concept plans.

1. Sensitive elements. The cluster plan should minimize the disturbance to sensitive elements on the subject parcel. Lot clustering sites should minimize disturbance to steeper sloped areas, perennial or intermittent stream buffers, habitat of threatened or endangered species, wildlife corridors, nontidal wetlands, reservoir watersheds, and areas of contiguous forest. Prospective lot clustering sites should use lesser sloped areas and minimize use of areas with sensitive resources. Lot clusters should be designed so as to lessen the visual impact of structures and uses from public roads and vistas.

2. Design criteria. The cluster plan should complement the surrounding environment and land uses by incorporating design elements that lessen the impact of structures and cleared space. The following criteria should be incorporated, unless staff verified site data is submitted that indicates that one or more of the following criteria is not applicable to the cluster site:

a. Locate no more than 50% of the lots along an existing county road or right-of-way. Additional cluster lots are to be sited away from public roads. If possible, additional cluster lots should utilize common means of access or rights-of-way;

b. Retain existing tree lines, hedge rows or rock formations that serve as buffers between proposed structures and county roads and rights-of-way;

c. Reduce visual prominence of proposed structures by building adjacent to woodland edges and not in the center of open space areas on a proposed cluster site;

d. Avoid building on ridge lines, unless forest buffers can be retained to reduce visual impacts;

e. Only open up views through selective tree and limb removal, as opposed to clear cutting.

(c) If the concept plan is approved by the Planning Commission, the developer may then proceed with platting of the clustered development in accordance with the subdivision regulations and the approved concept plan.

(d) For each remainder preservation parcel, the recorded plat shall bear a statement indicating "the land lies within an approved cluster development and no further subdivision of the designated remainder preservation parcel is permitted unless rezoned." The use of the remainder preservation parcel shall only be for those uses listed as principal permitted use (P) activities in § 1-19-289 for the district in which the parcel is located.

ARTICLE V: DISTRICT REGULATIONS

DIVISION 3. SUPPLEMENTARY DISTRICT REGULATIONS

§ 1-19-303. AGRICULTURAL DISTRICT.

(A) In the Agricultural Zoning District, the preferred use is agriculture. The operation at any time of any machinery used in farming procedures and all other agricultural operations shall be permitted and have preference over all other uses.

(B) The minimum lot size for single-family dwellings will be 40,000 square feet and, except as provided in § 1-19-303(C), subdivision will be permitted only as follows: a minor subdivision of 3 lots will be permitted to be subdivided off an original tract of land; thereafter land will have to be rezoned before additional dwellings, other than tenant houses, may be built. An original tract of land shall be as described in the county land records as of August 18, 1976.

(C) Clustering.

(1) Purpose and intent.

(a) To encourage the conservation of farmland in the Agricultural Zoning District by planning the residential development allowed in the zone to provide for the best obtainable siting, access and location of lots on a tract.

(b) To provide for a well-planned development while minimizing the use of prime agricultural land.

(2) Requirements.

(a) For the purpose of this subsection "clustering" shall be defined as directing the subdivision of lots on a single tract of land to meet the purposes of this section or transferring the authorized subdivision lots from adjacent tracts onto one tract for development. The Planning Commission shall make the final determination as to whether the cluster development can be achieved in keeping with the purposes of this section.

(b) When transferring authorized subdivision lots from 1 or more tracts, the minimum original tract area required for transfer shall be 25 acres. However, adjoining tracts of less than 25 acres under the same ownership may receive the rights if the Planning Commission determines that this will preserve prime farmland.

(c) Minimum lot size, width and yard areas shall be as specified in the Agricultural District. Lot sizes which are part of the cluster should be kept to a minimum in order to limit the impact on the future agricultural use of the remainder. Lot size shall average not more than 1.5 acres in size with no lots exceeding 2 acres. The Planning Commission shall have the authority to grant modifications to lot sizes based on percolation and other Health Department requirements.

(d) Subdivision under this subsection shall be as follows. A minor subdivision of 3 lots will be permitted to be subdivided on an original tract of land 25 acres or less. An original tract shall be as defined in § 1-19-303(B). On an original tract of land containing more than 25 acres, the Planning Commission may allow 1 lot in addition to those allowed on lesser tracts for each additional 50 acres or part thereof above the first 25 acres subject to the requirements of this section. The Planning Commission may preclude clustering rights where subdivision under this section will not conserve farmland, such as where the tract is primarily in wooded areas, floodplains, wetlands, steep slopes and other areas not in pasture or crop use.

(e) All clusters of 6 or more lots shall be served by an internal public street and shall not be stripped along an existing roadway.

(3) Procedures.

(a) Concept plan. For the subdivision of tracts eligible for cluster lots, a concept plan shall be submitted to the staff a minimum of ~~45~~60 days prior to the meeting at which it is to be considered by the Planning Commission showing all standard and potential cluster rights to determine the feasibility of subdivision rights for the original tract(s) of land. The plan shall be prepared in accordance with a "sample" cluster plan and show the following:

1. The lot layout (scale no smaller than 1 inch equals 100 feet) including building restriction lines and appropriate dimensions;
2. Street layout;
3. Vicinity map (scale no smaller than 1 inch equals 2,000 feet) showing the tract(s) and total acreages included within the plan;
4. Topography with minimum 10 foot contours (USGS Topo. Interpretation is permitted for Concept Plan);
5. Development rights table indicating acreages and development rights, both standard and cluster, for each tract and the total;
6. Soils data for the cluster area and the remaining farmland.

(b) The Planning Commission will have final approval over the location and layout of the proposed clustering of lots. The Planning Commission shall consider the following when reviewing Concept Plans.

1. Soils. The cluster plan should minimize the use of the higher quality soils (class I, II and III as designated in the soils classification study) and maximize the use of steeper sloped areas, areas of poorer soils and areas which are otherwise less productive for agricultural uses.
2. Surrounding land use and zoning. The cluster plan shall consider the existing land uses and zoning in the vicinity. Generally, new lots which are adjacent to existing development or residential zoning are preferred to creating an isolated cluster of new houses.

(c) Concept plan approval shall become null and void at the end of 1 year from the date of approval unless a combined preliminary/final plat or a preliminary plat has been submitted for approval for the property.

(d) If the concept plan is approved by the Planning Commission, the developer may then proceed with platting of the clustered development in accordance with the subdivision regulations and the approved concept plan. Final plats shall show all remaining parcels combined into 1 remainder except, however, any remaining parcel(s) separated by a public road shall be considered separate parcels and each parcel shall retain 1 development right. The plat shall bear a statement indicating that "The land lies within an approved agricultural cluster development and no further subdivision of the remaining land is permitted unless the property is placed in another zone or further subdivision is allowed by ordinance or regulation of the Board of County Commissioners."

(4) Even though a subdivision plat is not required for land subdivided for the purpose to be used as a farm, such subdivided land shall be counted as a lot and will be counted in the number of allowable lots that may be subdivided off the original tract of land.

(5) When filing a subdivision plat for less than the 3 lots allowed to be subdivided off the original tract of land, the remaining parcel must be designated "Remainder" on the subdivision plat or lose all further subdivision rights allowed under this section.

ARTICLE VII: SPECIAL DEVELOPMENT PROVISIONS

DIVISION 2. CLUSTER DEVELOPMENT

§ 1-19-361. PROCEDURE.

The procedure to obtain approval of plats under residential cluster development is as follows.

(A) A Concept Plan is to be submitted to the Planning Commission at least ~~45~~60 days prior to the Commission meeting at which it is to be considered which shows:

- (1) The type of dwelling unit (single- family, townhouse, garden apartment, etc.) and building restriction lines; and
- (2) Street layout; and
- (3) Green area system; and
- (4) Vicinity map (Scale: no smaller than 1 inch equals 2,000 feet); and
- (5) Topography with minimum 10 foot contours (USGS topographic maps are permitted for the concept plan); and
- (6) Number of acres in the entire tract; and
- (7) Overall dwelling unit density.

(B) If the concept plan is approved by the Commission, the developer will then proceed with platting of the development in accordance with the subdivision regulations. Final plats filed on cluster development shall bear a statement indicating that the land lies within an approved residential cluster development.

(C) In addition, the development is subject to the following conditions.

- (1) The development of land within the cluster is permitted only in accordance with the approved final plat.
- (2) The agreements concerning the ownership and maintenance of open space land will be recorded simultaneously with the final plat.

ARTICLE VI: SPECIAL DEVELOPMENT PROVISIONS

DIVISION 4. SITE PLAN REVIEW

§ 1-19-412. PROCEDURES.

(A) Each application involving site plan approval, together with the required fee (§ 1-19-28) AND OTHER REQUIRED PLAN SUBMISSIONS, INCLUDING, BUT NOT LIMITED TO ADEQUATE PUBLIC FACILITIES ORDINANCE STUDIES, FOREST RESOURCE ORDINANCE PLANS, SIGHT-DISTANCE STUDIES, AND STORM-WATER MANAGEMENT CONCEPTS and THE information described below, shall be submitted to the Office of Planning and Zoning at least ~~60~~90 days prior to a regularly scheduled Commission meeting. The site plan will be scheduled for a Technical Advisory Committee (TAC) meeting for review by agency representatives and representatives of the applicant. THE REVIEW PERIOD MAY BE REDUCED TO 60 DAYS IF, AFTER THE TAC MEETING, THE PLANNING STAFF DETERMINES THAT ALL COUNTY AND MARYLAND STATE AGENCY COMMENTS HAVE BEEN SUBSTANTIALLY ADDRESSED. The applicant may also file for a zoning certificate and building permit with the Office of Permits and Inspections before receiving site plan approval.

(1) The applicant shall place a sign within 10 feet of each property line which abuts a public road. If the property does not abut a public road, a sign shall be placed in such a manner so that it may be most readily seen by the public.

(a) The Zoning Administrator shall provide the required sign(s).

(b) The sign(s) shall be placed on the property at least 30 days prior to the initial Planning Commission meeting at which the site plan is to be considered.

(c) The sign(s) shall be affixed to a rigid board and maintained at all times by the applicant until the initial hearing is held.

(d) The applicant shall file a notarized affidavit certifying that the required signage has been posted.

(2) If any person removes or tampers with a posted sign during the above 30 day posting period, that person, upon conviction, shall be guilty of a misdemeanor, as provided in § 1-19-32.

(B) Approval of a site plan submitted under the provisions of this division shall expire 2 years after the date of the Planning Commission action unless construction has begun. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date, and for good cause shown by the applicant, a 1 time extension for a period not to exceed 6 months may be granted by the Zoning Administrator. However, the length of site plan approval, or extension thereof, may not exceed the length of the approval under the Adequate Public Facilities Ordinance (APFO) if APFO approval is required.

(C) The following information is required:

(1) A map of the applicant's entire holding at a convenient scale;

(2) A vicinity map at a scale of 1 inch equals 2,000 feet or more to the inch, indicating the location of the property with respect to surrounding property and streets. The map will show all streets and highways within 2,000 feet of the applicant's property;

(3) A topographic map of the property, at a minimum of 5 foot contour intervals, unless otherwise specified, showing the existing and

proposed regrading surface of the land and the location of natural features, such as streams, rock outcrops, and wooded areas;

(4) A site plan showing all existing and proposed improvements including location, proposed use and height of all buildings, location of all parking and truck loading areas with access and egress drives thereto; location of any outdoor storage; location and type of any recreation facilities; proposed grading, landscaping, and screening plans; description of proposed method to provide buffer areas and landscaping where required; location and design of outdoor lighting facilities; and the location, size, and type of all signs; and the location, size and type of all proposed storm water management facilities;

(5) A computation of the total areas of the lot, the building floor area for each type of proposed use, the building coverage and the roads and parking.

(6) Commercial or manufacturing uses will designate:

(a) The specific uses proposed and the number of employees for which buildings are designed;

(b) The type of power to be used for any manufacturing processes;

(c) Type of wastes or by-products to be produced by any process and proposed method of disposal of such wastes or by-products; and

(d) Such other information as may be required by the Planning Commission to determine the impact of a particular use on adjoining properties;

(7) (a) Soil type(s) information shall be provided and appropriate boundaries shown. In the event "wet soils" are located on or within 100 feet of any proposed residential site plan, then a soils delineation report shall be prepared by a soils scientist or professional engineer registered in the State of Maryland. The Planning Commission may waive this requirement if the "wet soils" are located within open space areas. The soils report shall be submitted for review by SCD prior to Planning Commission approval of the site plan, unless such a report was completed earlier within the development review process.

(b) If residential structure(s) with basements are proposed within "wet soils" a geotechnical report is required to be submitted by a professional engineer registered in the State of Maryland. A note shall be placed on the site plan that all construction shall be in accordance with the findings of the geotechnical report.

(D) Site plans may be prepared and submitted by an applicant. It may be required that such information, if found deficient or in error, be resubmitted over the certification of any engineer, architect, landscape architect, land surveyor or other certified professional. Site plans will be prepared to a scale of not smaller than 1 inch equals 100 feet, unless approved by the Zoning Administrator; the sheet or sheets shall be no less than 18 inches by 20 inches nor more than 24 inches by 36 inches, including a 1-1/2 inch margin for binding along the left edge. A site plan may be prepared on one or more sheets, in which case, match lines and an index sheet shall be provided.

ARTICLE VIII: INTENSIVE SWINE FEEDING OPERATIONS

§ 1-19-465. NOTICE AND HEARING REQUIREMENTS.

(A) Any person or entity applying for a permit for a swine feeding operation shall comply with the notice and hearing requirements as specified by this section and rules and regulations promulgated pursuant thereto by the Zoning Administrator.

(B) After submission of a completed application as provided by this article, the Zoning Administrator shall have 60 days to review the application for a new or expanding operation for physical and technical suitability.

(C) (1) After such review and after the applicant has submitted any required information to the Zoning Administrator, the Zoning Administrator shall require the applicant to notify all affected property owners of the proposed facility or expanding operations. Such notice shall be sent by certified mail, return receipt requested. The notice shall identify that an application for a swine feeding operation has been submitted to the Zoning Administrator, the location of the facility, that a hearing may be requested pursuant to this subsection, and the date the application will be available for public review which shall begin no earlier than the day following the certified mailing of all the required notices, and such other information required by the Zoning Administrator.

(2) Each affected property owner requesting a hearing shall submit, in writing, the following information:

(a) The name and address of the interested party and proof that the interested party is an affected property owner;

(b) A statement of specific allegations showing that the proposed facility or expanding operation may have a direct, substantial and immediate effect upon a legally protected interest of the interested party; and

(c) The relief sought by the interested party.

(3) If any of the affected property owners requests an administrative hearing, such hearing shall be held by the Zoning Administrator within not less than 30 days nor more than 60 days after the close of the public review period pursuant to subsection (D)(4) of this section. All interested parties may be joined as parties to the hearing.

(4) At the hearing the Zoning Administrator shall hear testimony and accept evidence pertaining to the physical and technical suitability of the proposed facility or expanding operations. In addition, any affected party may present specific allegations based on scientific and technical findings of fact showing that the proposed facility or expanding operations may have a direct, substantial and immediate effect upon a legally protected interest of the affected property owner.

(5) Establishment of property usage which is the date the swine feeding operation application was made available, pursuant to this section, for public review versus date of initial construction or placement of occupied residence, shall be given consideration when determining a contested matter between an applicant and an interested party on issues other than pollution of the waters of the state.

(D) (1) In addition to the individual notice required by section of this article, the Zoning Administrator shall require the applicant to give public notice of the opportunity to comment on the requested permit.

(2) The public notice for a new or expanding operation shall be published as a legal notice prior to the date the application is available for public viewing in at least 1 newspaper of general circulation in Frederick County. The applicant shall also post the property in accordance with § 1-19-46~~(E)~~(H).

(3) The notice shall identify locations where the application shall be available for viewing. Such locations shall include the office of the Zoning Administrator and a specific public location in the Frederick County.

(4) The application shall be available for public review during normal business hours. The copies of the application posted for public viewing shall be complete except for proprietary information otherwise protected by law and must remain posted during normal business hours for at least 20 working days after notice is published.

(5) The Zoning Administrator, as necessary, may hold public meetings at a location convenient to the proposed facility or expanding operation to address public comments on the proposed facility or expanding operation.

(E) Prior to the issuance of any permit for a swine feeding operation, or expanding operation, the Zoning Administrator shall require the applicant to submit:

(1) Documentation certifying notice has been issued to all affected property owners. A map of all affected property owners within 1 mile and the corresponding mailing list shall be submitted with each application; and

(2) Proof of publication notice of a new or expanding application for a swine feeding permit required by this section.